



Date: 16 July 2019
To: Mike Slater, Deputy Director-General Operations
CC: Martin Kessick, Deputy Director-General Biodiversity
From: Hilary Aikman, Director National Operations

Subject: KAHURANGI – POSSUM, RAT AND STOAT CONTROL OPERATION 2019

Purpose

1. To consider the granting of a revised permission for undertaking an aerial and hand laid 1080 operation in Kahurangi.

Background

2. As a result of reviewing Permission 5919096 granted to the Project Manager, Vector Free Marlborough Limited on 23 February 2019 (and varied on 9 May 2019), it was identified there were inaccuracies in that permission document and that a new permission should be considered.
3. Although the information provided in the application and assessment was sufficient to grant the permission, it was noted that the permission should have been granted to the company and that further authorisation, including under the Wildlife Act 1953, should be stated. There was also insufficient documentation of the procedural decisions.
4. There is now an opportunity for you to reconsider the permission and, if you consider it appropriate, to revoke the present permission and grant a new permission.
5. It was considered appropriate to request you as the Deputy Director-General to make the decision as a new decision-maker, as opposed to referring the matter back to the Director Operations who made the initial decision.
6. Attached is the application and assessment report which is still valid for this reconsideration. It is noted that the operation could occur shortly after the school holiday period has finished and so there is some urgency in undertaking this reconsideration.

Proposed Changes

Applicant

7. The Applicant is Vector Free Marlborough Limited, which being a company is a legal entity. Staff of Vector Free Marlborough Limited will undertake the logistics but will also sub-contract with suppliers to undertake this operation.

8. The permission should be granted in the name of Vector Free Marlborough Limited (and not its Project Manager). Vector Free Marlborough Limited should hold the permission, which will cover its staff and sub-contractors.

Land covered

9. The land listed in the permission included land which is not administered or managed by DOC. The land owned by Pending OIA consultation and the land administered for the Crown by Land Information New Zealand and Maritime New Zealand was included in the permission as consent has been obtained from the land administrators to undertake pest control as part of this operation. It was not intended, however, for the section 95A HSNO Act permission to apply to those areas. It is, therefore, appropriate to delete reference to those specific lands from the permission. They will be covered by the Wildlife Act authorisations (discussed below), which will apply to all land in the operational area.
10. Kahurangi Marine Reserve and the Radiant Range Conservation Area (Lyell Range) were also included in the permission, but it is proposed to delete reference to these areas from the proposed permission as the operation will not cover these areas.
11. The revised mapping to incorporate these changes showed that the hectares identified for some areas were also not accurate, and so have been amended.

Hazardous Substances and New Organisms Act 1986

12. Under the HSNO Act, the Environmental Protection Authority (the Authority) has approved the use of 1080 but has imposed a requirement that:

No person may apply or otherwise use this substance on land administered or managed by the Department of Conservation unless the person first obtains a permission from the Authority.

13. The Authority has delegated its powers to the chief executive of the Authority, who has in turn delegated his powers under section 95A of the HSNO Act to grant permissions for the use of such substances on land administered or managed by DOC to named positions within DOC, including to you as the Deputy Director-General, Operations.

14. In considering an application, in accordance with s 95A(3) you must consider:

- (a) the adverse effects involved in the use or uses of the substance to which the application relates; and
- (b) the conditions (if any) that it thinks should be imposed as part of the permission.

15. The assessment attached sets out the earlier consideration of the adverse effects and conditions. These are still applicable and you are able to rely on that assessment, noting that the use of 1080 has been approved and so the focus of the consideration is the use of this approved substance on land administered or managed by DOC.

16. As a decision maker under the HSNO Act you also need to consider the purpose and principles of the HSNO Act, again recognising that the Authority has approved this substance generally. The purpose of HSNO Act is to protect the environment, and

the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances.

17. This purpose is supported by the principles in section 5, which are to be recognised and provided for, being:

- (a) the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems:
- (b) the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations.

18. It is also necessary to take into account the precautionary principle (section 7), the principles of the Treaty of Waitangi (section 8) and the matters in section 6, being:

- (a) the sustainability of all native and valued introduced flora and fauna:
- (b) the intrinsic value of ecosystems:
- (c) public health:
- (d) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga:
- (e) the economic and related benefits and costs of using a particular hazardous substance or new organism:
- (f) New Zealand's international obligations.

19. The use of 1080 on lands managed or administered by DOC is for the purpose of killing possums and rats (with a further benefit of killing stoats). Although it is recognised that the use of hazardous substances is not ideal, it is the best option available to ensure the sustainability of indigenous species (flora and fauna) and protect taonga. The biodegradability of 1080 means that it has limited long term adverse effects on ecosystems and human health and safety is protected. This is further reinforced by the need to obtain public health permission.

20. The assessment undertaken confirms that the purpose and principles of the HSNO Act have been considered, including ensuring the principles of the Treaty have been given effect to through consultation. The conditions imposed on this operation support a precautionary approach.

21. The assessment confirms that the application is in accordance with the purpose and principles of the HSNO Act and that the adverse effects have been considered and conditions imposed. The granting of a permission is recommended.

Wildlife Act 1953

22. The species targeted in this operation are possum, rat and stoats. Stoats will be killed as a secondary effect. Unfortunately, as a result of the 1080 operations it is possible that protected wildlife may be killed even though the best practice methods

are used to avoid this situation – including controlling the colour, smell, size and distribution of bait so that it is not attractive to protected wildlife.

23. In relation to takahe, an area will be specifically excluded to minimise the risk, with pre and post operation monitoring to inform future operations. Rock wren monitoring is being undertaken. The treatment area is kea habitat and the Code of Practice for Aerial 1080 will apply. There are, however, two standards which will not be met but, as is explained in the assessment report, the Science Advisor Threats considers that the benefits of minimising pest reinvasion outweigh the potential cost of increased risk to kea.
24. The purpose of the Wildlife Act is the protection and control of wildlife. Although this may apply to individual wildlife in some cases, the Act is focussed at a species level. The scientific research shows that, although there is some risk to individual birds as a result of a 1080 drop, the resulting improvement in successful breeding means the population numbers increase and thus the species is protected.
25. In these circumstances it is recommended that an authorisation be granted by the Director-General under section 53 of the Wildlife Act to kill absolutely protected wildlife (to cover off this possibility) as a result of this operation because it will, in the longer term, aid the protection of wildlife.
26. Section 54 enables the Director-General to authorise the killing of animals that he is satisfied are causing damage to other wildlife or land. The studies undertaken by the Department have confirmed that possums, rats and stoats do cause damage to flora and indigenous wildlife (including birds and their eggs and their food sources). You can be satisfied that possums, rats and stoats are causing damage and that killing them is for the benefit of protected wildlife. Any other unprotected wildlife which may die as a result of this operation do not require a specific authorisation under the Wildlife Act as they are not the "nuisance" species to be controlled. It is recommended that a section 54 authorisation, therefore, be granted for these unprotected wildlife species which are to be controlled.

National Parks Act 1980

27. The operation area includes Kahurangi National Park. Authorisation is required for activities within a national park. The purpose of this activity is to kill possums, rats and stoats, although the killing of some other introduced and indigenous animals is possible. In this regard section 4(2)(b) of the Act provides:

... national parks shall be so administered and maintained under the provisions of this Act that— ...

except where the Authority otherwise determines, the native plants and animals of the parks shall as far as possible be preserved and the introduced plants and animals shall as far as possible be exterminated:

28. There is no specific power in the Act to authorise the killing of introduced animals. Section 51A of the National Parks Act provides that the Minister may authorise a person to do any thing that the Minister considers appropriate for the proper and beneficial management, administration and control of a park. The thing authorised cannot be inconsistent with the management plan. Section 5(2) provides that no person shall, without the prior written consent of the Minister, kill any indigenous animal found within a national park. Written consent can be given if consistent with a management plan.

29. The Kahurangi National Park Management Plan identifies indigenous species in Section 1.3.3 and pests (including possums, rats and stoats) and their adverse effects in Section 1.3.4. Section 3.1 on Biodiversity states as its Policy:

To preserve the indigenous biodiversity of the Park and maintain the integrity of its natural ecosystems as the highest management priority.

30. Introduced animals are recognised as posing a significant risk to native plants and animals through predation, competition and browsing. In relation to animal pest control it is noted:

However, other pests such as rats, hares and possums have little or no commercial or recreational value at present, so control must be carried out by the Department. In line with the National Parks Act, all animal pests have to be exterminated as far as possible by the Department using the most efficient and appropriate means available, including hunting, trapping, biocontrol, ground baiting and aerial poisoning.

31. The Implementation provisions for Section 3.1 are relevant, in particular:

9. Carry out animal pest eradication/control operations consistent with priorities identified in Table 2, the two CMS's, national pest control plans and Regional Pest Management Strategies.

14. Where practical and where they meet the objectives of this plan, co-ordinate pest control programmes with those of adjoining land managers

32. The Management Plan is supported by the General Policy for National Parks, in particular Policy 4.1 (which recognises the importance of indigenous species and that those within national parks should be managed to prevent their loss or decline and to restore genetic integrity and diversity) and Policy 4.3 relating to management of threats to indigenous species. Policy 4.3(d) provides, for example:

- iii) eradicating, where practicable, and containing and reducing the range of established introduced plants and animals; and
- iv) controlling widespread introduced species where necessary to maintain the general welfare of national park indigenous species, habitats and ecosystems or to maintain scenic and landform values.

33. Although the death of an individual native animal is not desired, both the Act and the Kahurangi National Park Management Plan (supported by General Policy) recognise the importance of controlling introduced animals. The application is in accordance with the purpose of the Act, as identified through the principles to be applied to national parks in sections 4 and 5 of the Act, and the management plan to provide for the eradication or control of pest species which have a significant impact on the preservation of indigenous animals.

34. It is recommended that consent be granted under sections 5 and 51A of the National Parks Act for the possible killing of native animals and the killing of introduced animals, particularly possums and rats.

Conservation Act 1987

35. Authorisation under the Conservation Act is concerned with conservation areas. This application relates to four conservation areas; one area being a conservation park

(held under section 19) and three areas being stewardship land (held under section 25).

36. Section 19(1) provides:

Every conservation park shall so be managed—

(a) that its natural and historic resources are protected; and

(b) subject to paragraph (a), to facilitate public recreation and enjoyment.

37. Section 25 provides that every stewardship area shall be managed so that its natural and historic resources are protected. "Natural resources" includes animals of all kinds and protection covers not only maintaining, but also enhancing.

38. In relation to each classification of conservation area it is relevant to consider the specific management requirements as well as the requirements of the section under which the permit is being granted. The purpose of killing possums, rats and stoats and the possible killing of indigenous animals is aimed at the protection of indigenous species in the longer term, even if individual indigenous animals are killed. Although there is clearly concern about the deaths of individual birds as a result of this operation, from a species perspective the use of 1080 has been shown to provide protection.

39. The operation in Kahurangi is, therefore, in accordance with the management of the stewardship areas and the conservation park. There is a slight restriction on the enjoyment of the conservation park, but this is for a limited period and the protection of natural resources does have primacy. Further, this is supported by the relevant conservation management strategy (discussed below). There is no relevant conservation management plan.

40. Under section 38 of the Conservation Act the Director-General may, if it is in accordance with a management plan (if any) and having had regard to the safety of the public, issue permits for hunting. Hunting for the purposes of this section includes the use of poison.

41. There is no relevant conservation management plan for the conservation areas covered by this application. The West Coast Conservation Management Strategy 2010-20 recognises possums, rats and stoats as threats to terrestrial biodiversity values (see Policies 3.3.1.3, 3.3.3.2 and 3.3.3.6 which identify the importance of pest management). The Conservation Management Strategy for Nelson / Marlborough Conservancy 1996 – 2006 in Section 10 deals with Animal Pests and references possums, rats and stoats. The stated objective is "to remove or minimise the impact of animal pests on native plants and animals, where practical and consistent with the legislation". The Implementation does not specifically identify an operation of this magnitude but does refer to the control of possums, rats and mustelids. Section 4.2 of the Conservation General Policy also identifies the need to manage pest threats.

42. Although there is no relevant management plan, the proposed operation would be consistent with the Conservation Act, the Conservation General Policy and the two relevant Conservation Management Strategies.

43. Public safety has been provided for by the applicant, recognising the potential high recreational use of the area at certain times of the year. Consultation with user groups has taken place. Public Health Permission with appropriate conditions has also been obtained, which although focussed on public health, also imposes controls which support public safety.

44. While section 38 does not cover fresh water fish, it is noted that there is no evidence that the killing of fish needs to be authorised. Unlike mammals, fish such as trout and eels are not at significant risk from 1080 during pest control operations. Independent studies stretching back to the late 1970's indicate there is no detectable impact of 1080 on trout or the freshwater invertebrates they feed on such as koura, caddisflies, midges and mayflies. Recent published studies by NIWA and Landcare Research scientists also show that while eels and freshwater crayfish which were deliberately fed 1080 pellets and carcasses of animals killed with 1080 absorbed low concentrations of the toxin, the levels absorbed posed little risk to humans. These findings are not unexpected. Even if 1080 entered water directly during a pest control operation, fish would not be affected as 1080 is rapidly diluted to low concentrations in water and breaks down into harmless substances.

Reserves Act 1977

45. The operation area includes two reserves, the Wangapeka Scenic Reserve and the Cobb Quarry Local Purpose Reserve. As public conservation land, these areas are administered by the Department under the Reserves Act. The general purpose of the Act provides for the preservation of areas of New Zealand with particular attributes for the benefit and enjoyment of the public. More relevant for this operation is section 3(1)(b):
- ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats,
...
46. In relation to scenic reserves, section 19(2)(a) provides that scenic reserves are to be managed so "the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved, and for this purpose, except where the Minister otherwise determines, exotic flora and fauna shall as far as possible be exterminated ... provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953".
47. The local purpose reserve covers two pieces of land, but is no longer used for the local purpose of being a quarry. Although the Reserves Act requires that the purpose of the reserve has primacy, a local purpose reserve is to be administered so that the biological features are managed and protected (section 23(2)(a)). This is, however, subject to the Wildlife Act in respect of actions towards fauna.
48. Section 50 provides that the Minister in relation to a scenic reserve and the administering body (in this case the Director-General through the Department) in relation to a local purpose reserve may authorise the killing of specified fauna within the reserve and authorise the use of objects to do so. This is also subject to the killing not being in contravention of the Wildlife Act.
49. As the purpose of the operation is to kill pests which will have the effect of assisting the survival of indigenous flora and fauna the actions of killing pests, including the risk of killing some indigenous animals, is within the purpose of the Reserves Act and the purpose for which the reserves were established. Further, the Conservation Management Strategies and Conservation General Policy, which also relate to reserves, discussed above under the Conservation Act heading, also support this approach.

50. If you are minded to grant the authorisations under sections 53 and 54 of the Wildlife Act then you are able to authorise the killing of both pests and indigenous fauna in these reserves – on behalf of the Minister for the scenic reserve and on behalf of the Director-General as the administering body for the local purpose reserve. It is recommended that appropriate authorisations be granted under section 50.

Consultation

51. The Department complies with section 4 of the Conservation Act across all of the Acts it administers. Ensuring that the principles of the Treaty of Waitangi are given effect to requires consultation with the Treaty partner. The assessment report confirms that the applicant has undertaken consultation with iwi and that the Department has been proactive in following up that this consultation with iwi.
52. The requirements for consultation imposed by the Authority under the HSNO Act are extensive. That consultation did, therefore, cover the issues of killing pests and protected wildlife, which is the focus of the approvals under the conservation legislation. There is confidence that the proposed operation and the consultation undertaken gives effect to the principles of the Treaty.

Conclusion

53. The application is consistent with the above provisions and the proposed replacement permission reflects this. The proposed changes have been incorporated within a new permission document which is attached for your consideration.

Recommendations

It is recommended that you:

1. Consider the application, assessment report and this memo;
2. Note that the consultation undertaken by the applicant and followed up by the Department is sufficient to meet the section 4 Conservation Act obligations;
3. Agree, under sub-delegation from the chief executive of the Environmental Protection Authority, to revoke permission 5919096 to enable the inaccuracies within that document to be corrected through a replacement permission;

Agree / ~~Disagree~~

4. Agree to grant a new permission in the name of the applicant, Vector Free Marlborough Limited (including its staff and sub-contractors);

Agree / ~~Disagree~~

5. Agree to not include the references to the following lands as they are either not DOC administered or managed land or are not within the operation area (and to amend the ha of some of the remaining sites):
 - 183.93ha of Kahurangi Marine Reserve, a Marine Reserve under the Marine Reserves Act 1971

- 138.48ha of Lyell Range – Radiant Range Conservation Area, a Stewardship Area under Section 25 and Section 62 of the Conservation Act 1987
- 40.42 ha of land owned by the Pending OIA consultation
- 4.93ha of land owned by Land Information NZ
- 0.77ha of land owned by Maritime NZ

Agree / ~~Disagree~~

6. Agree that the proposed permission and conditions consider the adverse effects of the use of sodium fluoroacetate (1080) on DOC managed or administered land and that granting the permission is in accordance with the purpose of the HSNO Act, recognising the life-supporting capacity of ecosystems and the well-being of people and communities and taking into account the principles of that Act;

Agree / ~~Disagree~~

7. Agree, under sub-delegation from the chief executive of the Environmental Protection Authority, to grant permission under s 95A of the Hazardous Substances and New Organisms Act to for the use of 1080 on the land managed or administered by DOC in the operation area;

Agree / ~~Disagree~~

8. Agree you are satisfied that, in the area of the operation, possums, rats and stoats are causing damage to wildlife and the killing of these unprotected wildlife is in accordance with the application will meet the purpose of the Wildlife Act;

Agree / ~~Disagree~~

9. Agree, under delegation from the Director-General of Conservation, to grant an authorisation under section 54 of the Wildlife Act for the killing of possums, rats and stoats in the operation area in accordance with the methods in the application;

Agree / ~~Disagree~~

10. Agree that, for the purpose of providing greater protection for protected indigenous species, individual protected wildlife may be killed as a result of this operation even though the conditions on the permission are complied with, and that this is in accordance with the purpose of the Wildlife Act;

Agree / ~~Disagree~~

11. Agree, under delegation from the Director-General of Conservation, to grant an authorisation under section 53 of the Wildlife Act for the killing of protected indigenous wildlife for the purpose of greater protection of indigenous wildlife in the operation area in accordance with the methods in the application;

Agree / ~~Disagree~~

12. Agree, in relation to the area of operation within the Kahurangi National Park, that this operation is in accordance with the purpose of the National Parks Act and is consistent with the Kahurangi National Park Management Plan;

Agree / ~~Disagree~~

13. Agree, in relation to the area of operation within the Kahurangi National Park and under delegated authority from the Minister of Conservation, to authorise under section 51A of the National Parks Act the killing of non-indigenous animals (particularly possums, rats and stoats);

Agree / ~~Disagree~~

14. Agree, in relation to the area of operation within the Kahurangi National Park and under delegated authority from the Minister of Conservation, to authorise under section 5 of the National Parks Act the possible killing of indigenous animals as part of this pest control operation;

Agree / ~~Disagree~~

15. Agree, in relation to the area of operation that is conservation area (conservation park and stewardship area), that the hunting of animals by the use of poison is in accordance with the purpose of the Conservation Act, that no conservation management plan applies (but the operation is in accordance with the relevant conservation management strategies and conservation general policy), and that public safety has been provided for;

Agree / ~~Disagree~~

16. Agree, in relation to the area of operation that is conservation area and under delegated authority from the Director-General, to grant a permit under section 38 of the Conservation Act for hunting animals by the use of poison;

Agree / ~~Disagree~~

17. Agree, in relation to the area of operation that is scenic reserve and local purpose reserve, that the killing of fauna by the use of poison is in accordance with the purpose of the Reserves Act, the management of the scenic reserve and local purpose reserve, and the relevant conservation management strategies and conservation general policy.

Agree / ~~Disagree~~

18. Agree, in relation to the area of operation that is scenic reserve and under delegated authority from the Minister, to authorise the killing of fauna on the reserve as part of this pest control operation (Note, you cannot agree to this if you have not agreed to the Wildlife Act authorisations);


Agree / ~~Disagree~~

19. Agree, in relation to the area of operation that is local purpose reserve and under delegated authority from the Director-General as administering body, to authorise the killing of fauna on the reserve as part of this pest control operation (Note, you cannot agree to this if you have not agreed to the Wildlife Act authorisations);

Agree / ~~Disagree~~

20. If you have agreed to the above, sign the attached Permission which immediately revokes Permission 5919096 and immediately replaces it with a new permission covering the above matters.


s 9(2)(a)



Hilary Aikman, Director National Operations

Decision made by me on 16th July 2019

s 9(2)(a)



Mike Slater, Deputy Director-General Operations

Released under the Official Information Act

Released under the Official Information Act